



ANDREW M. CUOMO
Governor

Department of Health

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 26, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eric Senat, M.D.

Ian Silverman, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Eric Senat, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.16-299) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified mail or in person to:

**Office of Professional Medical Conduct
New York State Department of Health
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204**

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

[Redacted]
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Eric Senat, M.D. (Respondent)

A proceeding to review a Determination by a Committee
(Committee) from the Board for Professional Medical
Conduct (BPMC)

Administrative Review Board (ARB)

Determination After Remand No. 16-299

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Ian Silverman, Esq.
For the Respondent: No Submission

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by engaging in conduct that resulted in the Respondent's Federal felony conviction and the Committee voted to revoke the Respondent's license to practice medicine in New York State (License). Following initial administrative review, the ARB remanded to the Committee so that the Respondent could appear at a hearing after his release from incarceration. The Committee conducted that remand hearing and voted once again to revoke the Respondent's License. The Respondent once again requested review pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2015), but never filed a review brief. Now, upon considering the Committee's Determinations and the hearing records, the ARB affirms the Committee's Determination to revoke the Respondent's License.

Initial Proceeding and Determination

Pursuant to PHL § 230 *et seq.*, BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The BPMC Committee in this case conducted the initial hearing under the expedited hearing procedures (Direct Referral Hearing) in PHL §230(10)(p). The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in New York Education Law (EL) §6530(9)(a)(ii) (McKinney 2015) by engaging in conduct that resulted in a conviction under Federal Law. The action against the Respondent began with a December 17, 2014 order from the Commissioner of Health suspending the Respondent's License summarily (Summary Order) pursuant to PHL § 230(12)(b). In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered their Initial Determination now on review.

The evidence at the initial hearing indicated that the Respondent entered a guilty plea in United States District Court for the Southern District of New York, to Health Care Fraud, a Federal felony, in violation of Title 18 USC §§ 1347 and 2. The record showed that the Respondent billed insurers fraudulently, between March 2006 and January 2013, by submitting claims at the physician rate for services which physician assistants provided. The District Court sentenced the Respondent to fifteen months imprisonment, two years supervised probation and \$324,726.00 in restitution. The Court also required the Respondent to pay a \$10,000.00 fine and a \$100.00 assessment.

The Committee's initial determination sustained allegations that the Respondent committed professional misconduct under EL § 6530(9)(a)(ii) by engaging in conduct that resulted in the Federal felony conviction. The Committee's Determination also stated incorrectly that the Respondent billed Medicaid fraudulently for many years. The Committee noted that the Respondent submitted 35 letters of support and that the Respondent provided free medical services. The Committee found that letters and pleas failed to excuse the Respondent for "outright thievery." The Committee voted to revoke the Respondent's License and the Respondent then requested administrative review.

The Respondent's Brief on the initial review indicated that the Respondent had requested an adjournment in the first hearing date until after his release from incarceration, so that the Respondent could appear before the Committee. The Respondent received no adjournment. The Brief also alleged that the Committee's Determination was incorrect in stating that the Respondent billed Medicaid fraudulently, in concluding that revocation was the appropriate penalty in the case and in using demeaning and biased language, such as accusing the Respondent of "outright thievery." The Petitioner replied that even if the Committee referred erroneously to Medicaid, it was a minor error, that the Respondent still billed fraudulently and that revocation constituted the proper penalty for insurance fraud.

Initial Review

Following our initial review over the hearing record and the review submissions, the ARB voted 5-0 to remand this case to the Committee so the Respondent could have the opportunity to appear before the Committee and so the Committee could correct the factual error

in the Determination. The Respondent was incarcerated at the time of hearing and requested an adjournment for a few months, until his release from incarceration, so the Respondent could appear before the Committee. The Petitioner opposed the adjournment on the grounds that the Respondent's continued practice constituted a danger to patients. The ARB found that argument unpersuasive because the Respondent's License remained under summary suspension and there were no charges in this case that the Respondent caused harm to any patients.

The ARB directed that the Committee should conduct additional proceedings so the Respondent may appear, so the Committee could consider again the record from the Respondent's conviction and so the Committee could render a supplemental Determination.

Remand Hearing

The Committee conducted the hearing on remand on April 7, 2016, at which the Respondent appeared and testified. The Committee rendered their Supplemental Determination on May 9, 2016.

The Committee's Supplemental Determination corrected the statement from the Initial Determination to read that the Respondent fraudulently billed health care benefit programs from March 2006 until January 2013. The Supplemental Determination mentioned that the Respondent testified that he billed for physician services by mistake, because the Respondent checked the wrong box on a template from a computerized billing program and that the Respondent used these forms inadvertently. The Committee rejected the Respondent's explanation as inconsistent with the Respondent's guilty plea in Federal Court and as non-credible. The Committee found that the Respondent's testimony demonstrated that he had failed

to take responsibility for his intentional fraud and that fraud in the practice of medicine, standing alone, warrants revocation as a sanction. The Committee found no mitigation in the restitution the Respondent paid as part of the criminal sanction. The Committee stated that the cost of health care fraud is passed on typically to policy holders and taxpayers. The Committee voted unanimously to affirm their prior Determination to revoke the Respondent's license.

The Respondent again requested administrative review, but failed to file a brief within thirty days from filing the notice for review, as PHL § 230-c requires. The Petitioner submitted a letter, which the ARB received on July 5, 2015, requesting that the ARB dismiss the Respondent's review notice for failure to submit a timely brief. The ARB determined that we would deliberate on this matter, rather than dismissing it, because we remanded this case to give the Respondent the opportunity to present his defense and the ARB wished to consider that defense.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL § 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd., 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minicelly v. Comm. of Health,

222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

After reviewing the complete record in this matter, the ARB affirms the Committee's Determination that the Respondent's criminal conduct constituted professional misconduct. We also affirm the Committee's Determination to revoke the Respondent's License.

The Respondent received an opportunity to explain his misconduct and express his remorse before the Committee, but the Respondent used that chance to claim that he committed

an inadvertent error. We find that it strains belief to claim that the Respondent committed the same inadvertent error continuously over the course of seven years. We find further that the Respondent's failure to accept responsibility and to express remorse leads to the conclusion that the Respondent remains at risk to repeat his misconduct if he receives the chance. There was questioning at the remand hearing about the Respondent's assets. We found that questioning totally irrelevant. The issue here was not the Respondent's assets, but rather the Respondent's integrity and trustworthiness. The Respondent's conduct demonstrated that he lacks the integrity necessary to practice medicine in New York State. The ARB agrees with the Committee that making restitution provided no mitigation in this case, because the Respondent paid the restitution as part of the sentence following his criminal conviction. The ARB also agrees with the Committee that revocation constitutes the appropriate penalty in this case.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Eric Senat, M.D.

Linda Prescott Wilson, an ARB Member, concurs in the Determination and Order in the
Matter of Dr. Senat.

Dated: 5 August, 2016

Linda Prescott Wilson

In the Matter of Eric Senat, M.D.

Peter S. Koenig, Sr., an ARB Member, concurs in the Determination and Order in the Matter of Dr. Senat.

Dated August 11, 2016


Peter S. Koenig, Sr.

In the Matter of Eric Senat, M.D.

Steven Grabiec, M.D., an ARB Member, concurs in the Determination and Order in the
Matter of Dr. Senat.

Dated: 8/15/ 2016


Steven Grabiec, M.D.

In the Matter of Eric Senat, M.D.

Richard D. Milone, an ARB Member, concurs in the Determination and Order in the
Matter of Dr. Senat.

Dated: August 11, 2016

[Redacted]
Richard D. Milone, M.D.

In the Matter of Eric Senat, M.D.

John A. D'Anna, M.D., an ARB Member, concurs in the Determination and Order of Dr.

Senat.

Dated: 8-25-16, 2016

[REDACTED]
John A. D'Anna, M.D.